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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re J.P., et al., Persons Coming
Under the Juvenile Court Laws

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,

Plaintiff and Respondent,

v.

C.F.,

Defendant and Appellant.

A157057, A157984

(Alameda County
Super. Ct. No. JD03067801,
JD03067601, JD03067501,
JD03067401, JD03067701)

In these consolidated appeals, C.F. (Father) challenges multiple orders that temporarily suspended his visitation with five minor children—I.P., Ma.P., S.P. (also known as A.P.), Me.P., and J.P. He contends there was insufficient evidence that visits would threaten the children’s physical safety or emotional well-being. We will affirm.

I. FACTS AND PROCEDURAL HISTORY

In April 2018, following an allegation that I.P. was physically abused, the Alameda County Social Services Agency (Agency) offered Father informal services after the development of a safety plan. Within a month, the family failed to abide by the safety plan, as Mother lived with the paternal grandmother and allowed Father unrestricted access to the children. Mother obtained a criminal protective order restricting Father's contact with Mother and the youngest child (J.P.), but Father violated the order. The Agency brought the children—aged one to six years old—into protective custody in January 2019.

A. Dependency Petition and Detention Order

On January 26, 2019, the Agency filed a dependency petition pursuant to Welfare and Institutions Code section 300, subdivision (b).¹ The petition alleged that Mother and Father had a history of domestic violence, Father perpetrated domestic violence against the children (including one incident that may have caused physical injury to I.P.), and Mother failed to protect the children.

The Agency's detention report asserted that the children were in danger of emotional or physical harm if the parents continued to engage in physical violence in their presence. Mother had admitted multiple incidents of domestic violence with Father, including an incident in which Father slammed her so hard to the ground that she suffered injuries to her appendix. She also described Father's physical aggression and abuse toward the children, including threatening to use a broomstick to hit Ma.P.

¹ Except where otherwise indicated, all statutory references are to the Welfare and Institutions Code.

At a hearing on January 29, 2019, the court ordered that the minors be detained.

B. Jurisdiction and Disposition

At a hearing on February 13, 2019, Father obtained presumed father status as to the minors except for I.P. At the time, Father was on probation for resisting arrest, criminal battery, and contempt of court. His visits with the children were suspended temporarily until the next hearing.

In its addendum report of February 28, 2019, the Agency advised that Father acknowledged his rage and need for help, claimed his anger and sadness were related to childhood trauma, and admitted violating the protective order. The family's therapist, Monica Reynoso, reported that I.P. was now referring to Father as "Carlos," expressed a need to stay away from Father, and asserted that Father hit a sibling on the head with a speaker cord and hit I.P. with a stick, which remained on top of the refrigerator as a threat. Roberto Macias-Sanchez, the individual therapist for Ma.P., noted several reports of past abuse and reported that Ma.P. had classroom difficulties due to being afraid of making mistakes and getting in trouble with Father. I.P.'s individual therapist, Amir Ahmed, observed that I.P. would hit himself as a form of self-punishment, and school personnel reported I.P. struggled most when Father was "back in the picture and living at home again."

"SPARKS" program director, Rose Messina, recommended that visitation between the children and Father be postponed until Father had fully engaged in appropriate intervention. She opined that children who had experienced exposure to prolonged trauma and disruptions could experience emotional dysregulation that would impact their functioning at school and with caregivers, and reintroducing a child to an adult who caused them harm

could trigger the child and increase the dysregulation. The children's caregiver also thought visits with Father would be detrimental and said the children were having nightmares.

At the continued jurisdictional and dispositional hearing on February 28, 2019, the court adopted the Agency's recommendations, adjudged the children dependents of the court, and found true the allegations of the petition as amended. The court ordered that the Agency provide family reunification services to Mother and Father. The court further ordered that visitation with Father continue to be temporarily suspended, deferring the visitation issue to the interim review hearing on March 14, 2019.

C. March 2019 Interim Review Hearings

At the March 14, 2019 interim review hearing, the children's attorney requested a court finding that visitation would be detrimental to the children, reporting that the children were afraid of Father. The court continued the order suspending visitation between Father and the children until the next hearing and denied Father's request to be elevated to presumed father status as to I.P.

At the March 28, 2019 interim review hearing, the court suspended Father's contact with the children and found that Father's visits with the children would be detrimental to them. The court noted that it would revisit the issue of visitation with Father at the next court date of May 10, 2019.

Father filed a notice of appeal on April 15, 2019 (A157057), seeking relief from the February 13, February 28, March 14, and March 28, 2019 orders suspending his visitation and the order declining to recognize him as a presumed father to I.P.

D. May and June 2019 Interim Review Hearings

At the May 10, 2019 Interim Hearing, the Agency recommended that the issue of visitation with Father be deferred until there was more positive feedback from the therapist concerning Father's engagement with services. County counsel noted that Father had "just started to engage with services" and referenced an April 29, 2019 letter from Messina and Macias-Sanchez, which reported that the children could suffer further emotional harm if visits occurred before Father had received treatment. The children's attorney agreed with the Agency and advised that the SPARKS therapeutic team had concluded it would be detrimental for the children to see Father until he was engaged in services and in therapy for violence issues. The court deferred the visitation issue but granted the Agency discretion to allow "therapeutic visits" upon notice to counsel for Mother and the minors.

At an interim review hearing on May 15, 2019, the court continued the order that temporarily suspended Father's visitation. In its report for an interim review hearing on June 7, 2019, the Agency advised that Father said he was attending domestic violence classes and had begun weekly parenting classes in May 2019. At the June 7 hearing, the court maintained the order that temporarily suspended Father's visitation and continued the matter to July 19, 2019.

E. July 2019 Review Hearing

For the interim review hearing on July 19, 2019, the Agency submitted its report as well as a report from therapist Reynoso, a letter from therapist Macias-Sanchez, and a letter from Father's therapist, Renee D'Valery. The court considered the material and admitted it into evidence.

Reynoso reported that the family sessions had not delved deeply enough for the children's healing and sense of safety; the girls had not felt

safe enough during family sessions to process the trauma they experienced. Macias-Sanchez reported that Father was an active and regular participant in Child Parent Psychotherapy, was gaining insight on the effects of his past actions on the children's well-being, understood healing was a process that could not be rushed, and was working on a plan to move forward with therapeutic visits. Macias-Sanchez cautioned, however, that asking children to override their own psychological defenses to satisfy Father's need to see them would be detrimental to their long-term adjustment with potential lifelong consequences.

Father's therapist, D'Valery, reported that Father consistently went to his appointments, was making progress toward his goals, attended domestic violence classes, was enrolled in parenting education, and attended individual therapy classes.

At the July 19, 2019 hearing, the Agency did not oppose therapeutic visits between Father and the children, but the children's counsel asked that the visitation issue be deferred until the next scheduled hearing, pending clarification from Macias-Sanchez as to his assessment. As the children's counsel recounted that the children had "suffered great damage at the hands of Father" and counsel had "asked for the detriment finding," Father interrupted with an audible "groan," prompting the court to request him to be quiet. When Father's attorney later attempted to excuse Father's reaction, the court remarked that "throughout this hearing" Father had engaged in such behavior, including the groan, smirking, and rolling his eyes at least four times. The court questioned Father's therapeutic progress given his apparent lack of impulse control.

The court denied Father's request for therapeutic visits with the children without prejudice, based on the report from the children's counsel

and the indication that the mere mention of Father's name during therapy triggered the girls such that they looked down or withdrew, which caused concern about the effect even therapeutic visits would have on the children. The court continued all prior orders, based on the Agency's report and the therapists' letters.

On July 31, 2019, Father filed a notice of appeal from the July 19, 2019 order (appeal A157984). We granted Father's request to consolidate the appeals.

II. DISCUSSION

Father challenges the orders denying him visitation on the ground there was insufficient evidence that visits posed a threat to the minors' physical safety or emotional well-being.

A. Mootness

As a threshold matter, the Agency contends the appeal is moot because on August 15, 2019—after the orders from which Father appeals—the juvenile court granted the Agency discretion to allow certain contact between Father and the children, such as allowing the Father to call the children or send them a letter. Father counters that granting such discretion to the Agency, rather than ordering visitation, was itself error (*In re M.R.* (2005) 132 Cal.App.4th 269, 274), and the court specified that no actual visits between Father and the children would occur without notice to the minors' counsel. Because of the difference between ordering visitation and granting the Agency discretion to allow contact, and the fact that the issue of visitation appears to be one that will likely recur, we will proceed to the merits.

B. Merits

Section 362.1, subdivision (a) provides: "In order to maintain ties between the parent or guardian and any siblings and the child, and to

provide information relevant to deciding if, and when, to return a child to the custody of his or her parent or guardian, or to encourage or suspend sibling interaction, any order placing a child in foster care, and ordering reunification services, *shall provide* as follows: [¶] (1) [¶] (A) *Subject to subparagraph (B), for visitation between the parent or guardian and the child. Visitation shall be as frequent as possible, consistent with the well-being of the child.* [¶] (B) *No visitation order shall jeopardize the safety of the child.* To protect the safety of the child, the court may keep the child’s address confidential. If the parent of the child has been convicted of murder in the first degree, as defined in Section 189 of the Penal Code, and the victim of the murder was the other parent of the child, the court shall order visitation between the child and the parent only if that order would be consistent with Section 3030 of the Family Code.” (Italics added.)

In essence, upon removing the child and offering reunification services, the court must order visitation unless it would jeopardize the child’s “safety,” but the frequency of the visitation turns on the child’s “well-being.” (§ 362.1, subd. (a).) Given the statutory language, courts are split on whether section 361.2 requires visitation unless there is evidence of a threat to the minor’s *physical* safety (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1491–1492) or whether courts may also deny visitation based on a threat to the minor’s *emotional* well-being (*In re T.M.* (2016) 4 Cal.App.5th 1214, 1219–1220; *In re Mark L.* (2001) 94 Cal.App.4th 573, 581, disapproved on another ground in *Conservatorship v. O.B.* (2020) 9 Cal.5th 989, 1010 fn. 7). Father contends we should follow *In re C.C.* and review only for a threat to the children’s physical safety.

However, we agree with our colleagues in Division Four of this appellate district that *In re T.M.* and *In re Mark L.* express a better view

than *In re C.C.*, and that visitation may be denied (at least temporarily, as in this case) if visits threaten the child's emotional well-being. (*In re Matthew C.* (2017) 9 Cal.App.5th 1090, 1101–1103.) Because the juvenile court is explicitly authorized by statute to reduce the frequency of visits due to concern for the child's well-being, it is reasonable to conclude that the frequency of visits might be reduced temporarily to zero rather than expose the child to further emotional trauma, particularly since traumatic visits would do nothing to further reunification anyway.

Another inconsistency in the case law pertains to the standard of review. Visitation orders are often reviewed for an abuse of discretion. (E.g., *In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1356; *In re Julie M.* (1999) 69 Cal.App.4th 41, 48–51.) But other decisions have indicated that, where visitation has been denied, there must be substantial evidence supporting the finding of detriment. (*In re Mark L.*, *supra*, 94 Cal.App.4th at p. 581; *In re Cheryl H.* (1984) 153 Cal.App.3d 1098, 1133; see *In re Daniel C.H.* (1990) 220 Cal.App.3d 814, 839 [substantial evidence supported court's implicit finding that termination of visitation was necessary to protect the child, and the court did not abuse its discretion in denying visitation]; *In re T.M.*, *supra*, 4 Cal.App.5th at pp. 1220–1221 [substantial evidence supported court's finding and the court did not abuse its discretion].) We will review for substantial evidence.

Here, substantial evidence supports a finding, at the time of each of the orders from which Father appeals, that the children would be at risk of detriment in the form of harm to their emotional well-being if Father was granted visitation. The sustained allegations described Father's history of domestic violence and physical aggression towards Mother and the children, including one incident that caused injury to I.P. Father acknowledged his

rage and admitted his mistreatment of the minors and violation of the protective order that had restricted his contact with Mother and the children. There were numerous reports from Mother, the children's caretaker, the children, and their therapists concerning Father's abuse and aggression toward the children, including hitting them with objects, breaking I.P.'s arm, and holding a gun to Mother's head in front of I.P.

Moreover, there was substantial evidence that the children would be harmed emotionally if exposed to contact with Father, even in the context of therapeutic visits. As set forth in the Agency's February 2019 addendum report, the children's fear and emotional trauma were noted by the individual and family therapists, the children's caregiver, school personnel, and the children themselves. I.P. specifically expressed that he did not want to see his Father. Messina recommended that visitation between the children and Father be postponed until Father had fully engaged in appropriate intervention, noting that children who experienced prolonged trauma can experience emotional dysregulation—such as the excessive worry, avoidance, and other behaviors that were affecting the children's functioning at school and with caregivers—and reintroducing a child to an adult who caused them harm can increase the dysregulation. Father did not even begin treatment and services until April 2019.

In regard to the July 2019 hearing, therapist Reynoso opined that the family sessions had not gone deep enough for the children to heal and have a sense of safety, and the girls did not feel safe enough to process their trauma. Based on its personal observations of Father at the hearing, the court concluded that Father displayed poor impulse control despite his therapy and services, noting that he had groaned out loud and repeatedly smirked and rolled his eyes during the proceeding. The court further expressed its

concern about therapeutic visits in light of reports that the mere mention of Father's name triggered the girls during therapy sessions.

Father acknowledges the evidence that he physically abused the minors, but he argues that the evidence did not show that his behavior caused Ma.P., A.P., Me.P. or J.P. to fear him to a point where therapeutic visits would have threatened their emotional well-being. By April 2019, he argues, Ma.P. and A.P. were saying they did want to visit Father, and there was no indication that the very young Me.P. or J.P. ever asserted an aversion to visits. Furthermore, Father had expressed remorse and, by the time of the July 2019 hearing, his therapists noted his participation in therapy and openness to structuring therapeutic visits in a way that would protect the children's emotional well-being.

It is not our role, however, to reweigh the evidence. (See *In re Daniel C.H.*, *supra*, 220 Cal.App.3d at p. 839.) From the totality of the evidence before the juvenile court, and the court's observations of Father during the hearing, it was reasonable for the court to conclude that, as of the time of the hearings, visitation with Father would be inconsistent with the children's emotional well-being. (*In re Mark L.*, *supra*, 94 Cal.App.4th at p. 581 [substantial evidence supported the juvenile court's order denying father visitation, where forced contact with the child might harm the child emotionally]; *In re T.M.*, *supra*, 4 Cal.App.5th at pp. 1220–1221 [father's visitation was not yet appropriate in light of substantial evidence of a risk of substantial harm to the minor's well-being, where the minor was extremely fearful of his father and asked the social worker not to make him see his father, and father had not yet addressed his serious anger issues, did not appear to recognize the harm his behavior was causing, and displayed offensive and disruptive behavior at the hearing].) Because substantial

evidence supported the court's determination, Father fails to demonstrate any abuse of discretion.

III. DISPOSITION

The orders are affirmed.

NEEDHAM, Acting P.J.

We concur.

BURNS, J.

REARDON, J. *

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* Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.